

1 PHILLIP A. TALBERT
United States Attorney
2 STEPHANIE M. STOKMAN
Assistant United States Attorney
3 2500 Tulare Street, Suite 4401
Fresno, CA 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5
6 Attorneys for Plaintiff
United States of America
7
8

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.
13

EDDIE CORDERO SERNA,

14 Defendants.
15

CASE NO. 1:22-CR-00246-ADA-BAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: March 6, 2023
TIME: 8:30 a.m.
COURT: Hon. Ana de Alba

16 This case is set for trial confirmation on March 6, 2023, which the parties stipulate to vacate in
17 order to set a change of plea hearing on March 20, 2023, for the reasons set forth below. On May 13,
18 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of
19 California “until further notice.” Further, pursuant to General Order 611, this Court’s declaration of
20 judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16,
21 2020 continuing this Court’s judicial emergency, this Court has allowed district judges to continue all
22 criminal matters to a date after May 2, 2021.¹ This and previous General Orders, as well as the
23 declarations of judicial emergency, were entered to address public health concerns related to COVID-19.
24

25 Although the General Orders and declarations of emergency address the district-wide health
concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision
26

27
28 ¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record
2 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-
3 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
4 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
5 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
6 findings on the record “either orally or in writing”).

7 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
8 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
9 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the
10 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
11 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.
12 § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of
13 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
14 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

15 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”
16 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
17 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
18 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
19 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d
20 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
21 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
22 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
23 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
24 by the statutory rules.

25 In light of the societal context created by the foregoing, this Court should consider the following
26 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
27 justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date

28

² The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.

1 for the change of plea. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial
2 continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
5 through defendant’s counsel of record, hereby stipulate as follows:

6 1. By previous order, this matter was set for trial confirmation on March 6, 2023.
7 2. By this stipulation, the parties now move to vacate the confirmation date for a change of
8 plea on March 20, 2023.

9 3. The parties agree and stipulate, and request that the Court find the following:

10 a) On February 22, 2023, the parties entered into and filed a Memorandum of Plea
11 Agreement. For that reason, the parties agree that a change of plea on March 20, 2023 is
12 appropriate. Prior to filing this stipulation, the parties conferred with the courtroom deputy for
13 the assigned district court judge, who indicated this date is available for a change of plea.

14 b) Time was previously excluded until April 11, 2023.

15 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
16 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
17 must commence.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 _____
Cal. March 18, 2020).

1 IT IS SO STIPULATED.
2
3

Dated: February 22, 2023

PHILLIP A. TALBERT
United States Attorney

4
5 /s/ STEPHANIE M. STOKMAN
6 STEPHANIE M. STOKMAN
7 Assistant United States Attorney
8
9

Dated: February 22, 2023

/s/ RICHARD BESHWATE
RICHARD BESHWATE
Counsel for Defendant
Eddie Cordero Serna
10
11

IT IS SO ORDERED.

12 Dated: February 23, 2023

13 
UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28